

**Written Testimony of Brent Blue MD**  
**The Committee on Transportation and Infrastructure**  
**“Residential Through-the-Fence Agreements at Public**  
**Airports: Action to Date and Challenges Ahead.”**  
**September 22, 2010**

**Chairman Oberstar, Ranking Member Mica, and Committee Members:**

Thank you for the opportunity to present written testimony to the Committee on Residential Through-the-Fence (rTTF) agreements at federally funded airports.

The FAA, through its Airport Compliance Manual (5190.6B dated September 30, 2009), interprets any residential land use next to airports as “incompatible land use.” The basis of prejudice is the FAA’s interpretation of 49 United States Code (U.S.C.) 47107(a) (10) and the associated federal grant assurance 21, Compatible Land Use.

The FAA has refused to distinguish between residential homes which have no aviation connection and aviation connected hangar homes. Part of this deficiency is related to the FAA’s Airport Compliance and Field Operations Division on site lack of familiarity with hangar homes. Residential hangar homes are completely different than non aviation related homes and are airport “Compatible Land Use.” Not only are they compatible, but rTTF agreements are good for airports economically and improve security.

The FAA has stated multiple reasons for their proposed ban of rTTF agreements based on federal grant assurance 21 and other sections in this Code. The FAA’s reasons and interpretations for the ban have change over the past year as each one of has been challenged, disproven or shown not to have any evidence or data to support them in the first place.

The FAA has listed the follow reasons at various times for their prejudice against hangar homes:

1. Noise Complaints;
2. Diminished Security;
3. Diminished Safety;
4. Efforts by Residential Neighbors to Restrain the Growth of the Airport or Impose Restrictions;
5. Wildlife Issues;
6. Unfair Economic Benefit from Airport Improvement Program Grant Monies to rTTF Agreement Holders; and
7. Owners of rTTF Hangar Homes Could Sell Their Property to a Non Aviation Related Purchaser.

## **1. Noise Complaints**

Through a Freedom of Information Act request asking for all the noise complaints from hangar homes for the past ten years, the FAA was unable to produce one complaint or any other supporting evidence for this concern related to rTTF agreement holders. FAA personnel stated that "They (hangar home owners) complain just like everyone else when the noise is from an aircraft that isn't theirs."<sup>1</sup> This is a totally unsupported statement lacking documentation of written complaints, interviews, or any other data collection.<sup>2</sup> It is strictly the opinion of FAA personnel who do not have any direct experience with hangar residences.

FAA personnel have also pointed to federal monies used to purchase residences next to airports due to noise and/or other purposes. None of these monies were used to purchase hangar homes with rTTF agreements.<sup>3</sup>

## **2. Diminished Security**

Through FOIA requests, no data or other information was in existence to show diminished security. In the contrary, the FAA and the TSA have both

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<sup>1</sup> Katherine Baxter, FAA Airport Compliance and Field Operations Division, Email 19 May 2009

<sup>2</sup> FOIA request November 9, 2009

<sup>3</sup> FOIA request November 10, 2009

endorsed the Aircraft Owners and Pilot's Associations (AOPA) "Airport Watch" program.<sup>4</sup> The AOPA has partnered with the TSA to develop this nationwide program that uses the more than 600,000 pilots as eyes and ears for observing and reporting suspicious activity. Residents of hangar homes are adjacent to the airport on a more consistent basis, especially at night, when most non commercial general aviation airports are totally vacant and less secure.

Just as an example, at the Erie, CO, airport this year, a hangar home resident reported suspicious airport activity which led to the arrest of drug smugglers who were using aircraft for their transport.

We have polled the administrators of approximately 600 private residential airparks for security issues at their facilities. That poll revealed only two unauthorized encroachments over the past 10 years—neither of which were security related.<sup>5</sup>

### **3. Diminished Safety**

The FAA has not shown any data which suggest that rTTF agreements diminish safety at the approximately 75 airports which currently have rTTF agreements.<sup>6</sup> Nor has our polling of the approximately 600 non federally funded airparks shown any safety issues related to runway and taxiway access.<sup>7</sup>

The FAA continues to use a structure at Gillespie Field as an example of improper rTTF building affecting safety due to the restriction of tower line of site to a federally funded taxiway.<sup>8</sup> However, there are several problems with the use of this example: 1) Because the structure is on airport property, the FAA approved the construction plans; 2) the fact that the building contains a residence has no bearing on the issue<sup>9</sup>; and 3) the owners paid for and maintain a closed circuit television system for the

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<sup>4</sup> <http://www.aopa.org/airportwatch/>

<sup>5</sup> David Sclair, President of [www.livingwithyourairplane.org](http://www.livingwithyourairplane.org), results reported by Email communication

<sup>6</sup> Ibid FOIA November 10, 2009

<sup>7</sup> Ibid Sclair, President of [www.livingwithyourairplane.org](http://www.livingwithyourairplane.org), results reported by Email communication

<sup>8</sup> Document ID: FAA-2010-0831-0007.3 Page 5

<sup>9</sup> Fact acknowledged by Randell Fiertz, FAA, Public Meeting, March 4, 2010

tower that actually improves visibility over direct line of site due to frequent fog in the area.<sup>10</sup>

Safety concerns expressed by the FAA personnel have been strictly conjectured without basis on fact or experience.

#### **4. Efforts by Residential Neighbors to Restrain the Growth of the Airport or Impose Restrictions**

The FAA does not have one instance where hangar home residents have tried to restrain or impose restrictions on airport growth or operations.<sup>11</sup> Although this may have occurred with non aviation related residences, there has never been a case that the FAA can document where this has been an issue with rTTF agreement holders.

#### **5. Wildlife Issues**

Although this has been cited by FAA personnel as an issue, we have yet to determine a wildlife connection to rTTF agreements. Fencing of airports is independent of whether rTTF agreements are in place.

When asked at a public meeting why a local airport grant of \$7 million did not include money or a requirement for a fence, FAA personnel responded that "fencing is not required" at the airport which has rTTF access.<sup>12</sup>

The FAA personnel at this meeting were asked three times, after their personal inspection of the airport, if they found any problems to which they responded "no" every time.<sup>13</sup> Despite this public statement, the FAA used a photo of a gate at this same airport as an example of improper rTTF access.<sup>14</sup>

#### **6. Unfair Economic Benefit from Airport Improvement Program Grant Monies to rTTF Agreement Holders**

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<sup>10</sup> Private communication, Willis Allen, San Diego, CA, March 4, 2010

<sup>11</sup> Ibid FOIA November 10, 2009

<sup>12</sup> Public Meeting, March 4, 2010, Driggs ID (KDIJ)

<sup>13</sup> Ibid

<sup>14</sup> Document ID: FAA-2010-0831-0007.3 Page 18

This issue would be similar to the economic benefit for a homeowner near a bus stop that was upgraded with a shelter with stimulus monies. Similarly, owners of properties near federal highways benefit from road improvements.

In actuality, any increased valuation of a hangar home due to airport improvements would be reflected in higher property taxes, thus, supporting the local community. An example of this is Claremont County airport where rTTF homeowners pay approximate average of \$17,000 a year in property taxes.<sup>15</sup>

#### **7. Owners of rTTF Hangar Homes Could Sell Their Property to a Non Aviation Related Purchaser.**

This cannot be controlled; however, the likelihood of a non aviation related person buying a home which has an increased price due to the presence of an aircraft hangar would hardly be enticed to pay extra for its presence if they did not have an intention to use it for its intended purpose.

In addition, most rTTF owners are currently required sign aviation easements related to noise. These easements persist through a sale.

#### **Comments Specific to the FAA-2010-0831 Proposed Policy:**

The FAA proposes, with this action, to codify the prohibition of residential Through-the-Fence access at airports in the National Plan of Integrated Airport Systems (NPIAS), more commonly known as federally funded airports. Although this action is somewhat of a compromise position by the FAA from their new, total ban of all rTTF access in the 2009 FAA Order 5190.6B by allowing current rTTF to continue at federally funded airports, the FAA is still proposing prohibition for future rTTF access is based on theoretical concerns without any supporting data which was the fatal flaw in their original order. This action is an attempt by the FAA to insulate itself from the question of whether a hangar home with rTTF access is airport adjacent "compatible" land use.

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<sup>15</sup> Personal Communication, Hal Sheavers, September 17, 2010

Specifically, in the section “Actions Proposed in This Notice”, section 2; bullet point 1, the FAA states that “airport sponsors retain the powers necessary to meet their obligations under the grant assurances and **are able to maintain and develop the airport in the future**” (emphasis mine).<sup>16</sup>

The FAA has acknowledged that there approximately 75 airports which currently have rTTF access but has not demonstrated one situation where the airport sponsors have not been able to “maintain and develop the airports” due to rTTF presence.

In the same section, next bullet point, the FAA states “Ensure that airports have sufficient revenue to be as self-sustaining as possible and meet capital and operating requirement.” The FAA has acknowledged that rTTF access.<sup>17</sup>

In the following bullet point, the FAA still classifies rTTF as “noncompatible (sic) land uses” by continuing to formally not recognize the difference between the airport noise sensitivity of hangar residences and non aviation related residences. In this notice, the FAA states in reference to “a change in operations at the airport” that a “through-the-fence owner is just as likely to oppose the change as support it<sup>18</sup>.” This comment is completely unsupported by data and is the personal opinion of FAA personnel. It is obviously more logical that someone with an aviation connection would support aviation across the board versus someone who does not have any aviation connection whatsoever.

The Notice continues that the “location of any residences near an airport boundary will increase the potential for opposition to the expansion or increased use of the airport.” However, the FAA does not justify with any supporting data that “expansion or increased use” would be opposed to any lesser or greater degree by other surrounding property holders such as cemeteries, golf courses, schools, churches, or industrial facilities. As above, common sense dictates someone with an aviation interest would be

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<sup>16</sup> Federal Register/Vol. 75, No. 174, p 54952

<sup>17</sup> Federal Register/Vol. 75, No. 174, p 54949

<sup>18</sup> Federal Register/Vol. 75, No. 174, p 54948

more likely than someone who does not have aviation interest to support airport "expansion or increased use."

In section III, the FAA states that "residential owners, more so than commercial interests, typically expect that their residential property will remain suitable for residential use and protected from adverse effects for a long time"<sup>19</sup> (emphasis mine). The FAA has absolutely no data nor source for this statement. Does the FAA have any evidence that someone who owns a factory next to an airport will be less expectant that a home owner that their property will be "protected from adverse effects?" The answer is "No!" Plus, the loss of business income due to a forced move of a commercial enterprise would not be experienced by a hangar home owner, thus, the commercial owner might be more difficult to move.

Under Section V, C.2., the FAA states that it "considers a sponsor's consent to any new permission for through-the-fence access to the airport from a residential property to inconsistent with the sponsor's grant assurances, specifically, the obligation to maintain rights and powers to control airport development and operation."<sup>20</sup> The FAA has does not have one example of the inability "to maintain rights and powers to control an airport development and operation" happening at any of the approximately 75 airports with rTTF activity.

In the same section, the FAA states that permitting rTTF may "result in violations of the obligation to impose a reasonable, not unjustly rate structure that make the airport as self-sustaining as possible."<sup>21</sup> As previously noted the FAA has acknowledged that rTTF access has proven economic support of the airports and has no evidence to the contrary making this suggested possibility inaccurate and opposed to the evidence.

The FAA continues "interests of commercial and transient users may create a demand for expanded use of the airport or expansion of airport property, both of which could be adversely affected by the existence of residential

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<sup>19</sup> Federal Register/Vol. 75, No. 174, p 54954

<sup>20</sup> Federal Register/Vol. 75, No. 174, p 54956

<sup>21</sup> Ibid

properties on the airport boundary."<sup>22</sup> As stated before, the presence of rTTF hangar homes versus other types of properties has not been shown to be consequential. In addition, the FAA has not shown this to be an issue at any of the approximately 75 airports which currently have rTTF access.

Thus, in summation, the statement that "the FAA will consider a new through-the-fence access arrangement from a property used as a residence or zoned for residential use to be an apparent violation of the sponsor's grant assurances..."<sup>23</sup> is unjustified.

The FAA's proposal to codify the prohibition of rTTF lacks any documented purpose and only reflects the unsubstantiated bias of FAA staff. In fact, the prohibition will potentially hurt the viability of general aviation airports in a time when the economic resources of airports are tenuous.

Local airport sponsors know who their best neighbors are and those sponsors will protect the interests of their facility. Airport sponsors should be allowed to control access to their taxiways and runways since they are the most informed about their facilities and their specific operations and situations.

The FAA's oversight and attempt to control to rTTF agreements, in order to protect the investment of the federal government, is understandable but lacks foundation. With a modicum of advisory remarks, the FAA can monitor and alleviate their concerns about rTTF agreements at federally funded airports without an unjustified ban.

Thank you Chairman Oberstar, Ranking Member Mica, and members of the Committee for the opportunity to submit these comments.

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<sup>22</sup> Ibid

<sup>23</sup> Ibid



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